

**QUALIFYING
SOLICITATION FOR OFFERS
PHASE ONE
GENERAL SERVICES ADMINISTRATION
FOR
THE ENVIRONMENTAL PROTECTION AGENCY
IN
DENVER, COLORADO**

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The information collection requirements contained in this Solicitation/Contract, that are not required by the regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

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Attachment A – Assignable Option Agreement

Attachment B – GSA Form 3518 – Representations and Certifications

1.0 GENERAL PROJECT DESCRIPTION

1.1 AMOUNT AND TYPE OF SPACE REQUIRED

- A. The General Services Administration (GSA) is interested in leasing approximately 250,000 gross square feet of space for the Environmental Protection Agency, (EPA), for general office and related uses on a full service basis. The gross square footage must yield 231,000 ANSI/BOMA Office Area (previously Usable) square feet, available for use by tenant for personnel, furnishings, and equipment. Refer to the "ANSI/BOMA Office Area Square Feet" in Paragraph 3.16 of this Solicitation for Offer (SFO).
- B. The leased space is to be constructed by the Offeror on a pre-determined site, located on the northerly 56% (56,773 sq. ft. of land) of what is formerly known as the Postal Annex Building, (Site) known as Lots 1 through 8 inclusive and Lots 25 through 32 inclusive and the vacated alley. The site is more commonly known as 16th Street to the north, 15th Street to the South, Wewatta Street to the west and Wynkoop Street to the east. Land size of the site is subject to minor changes.

The existing building will be demolished approximately 180 days after award and the site will be made suitable for development. The new building will have retail space on the ground floor on the Wynkoop and 16th St. sides. Retail space entrances, service corridors and loading dock must be physically separated from EPA areas. There will be limited access from the retail space directly into the Building. The retail space shall commence at the point of the city sidewalk except for the westerly and southerly sides.

- C. The proposed building will be a state of the art facility. It should be an environmentally sustainable project that publicly reflects the environmental protection mission of the U.S. Environmental Protection Agency: conserving resources in its construction and operation, being energy efficient, water conserving, having good indoor air quality, having as minimal as possible negative impacts on the environment, and having a positive impact on the environment where possible. The building should also provide a safe, highly productive, inviting and efficient work environment. The building will be required to achieve, at a minimum, a Leadership in Energy and Environmental Design version 2.1 (LEEDTM) silver rating, as described in the United States Green Building Council Web site <http://www.usgbc.org/>, LEEDTM Rating System.
- D. The base building infrastructure will be capable of supporting current and future needs, and will be designed in such a way as to readily facilitate changes in organization and mission. The building shall comply with all the Government's minimum requirements set forth in this Solicitation for Offer. The building will consist of a multi-story structure of office and related space using a minimum floor plate of 25,000 sf. The building shall project a professional and aesthetically pleasing appearance, including an attractive well-defined main entrance.
- E. The Security Standards for the new facility must comply with Justice Department, General Services Administration and the Office of Homeland Security recommendations. The building will be classified as a level IV facility. These standards will include, but not be limited to:
1. All visitors, deliveries, mail and packages will pass through security screening before entering any EPA area of the building.
 2. Access to public oriented uses or retail uses must be via separate entrances. Access to the EPA offices shall be secured at one entrance in the main lobby.
 3. Parking is to be included as a part of the project to comply with the City and County of Denver requirements and the Office of Homeland Security for this particular site. Complying with this requirement will include forty, (40) enclosed and secured parking spaces in the building designated in the lease for EPA's exclusive use. Bicycle parking for fifty, (50) shall be provided in the same enclosed, secured area.
 4. Access to any additional on site parking spaces provided for this project must comply with the Office of Homeland Security Standards.

1.2 LEASE TERM

The lease term is for ten (10) years firm, no options. All terms and conditions contained herein shall prevail throughout the term of the lease.

1.3 OCCUPANCY DATE

Occupancy is required not later than July 1, 2006.

1.4 LABOR STANDARDS

- A. Since the Offeror will satisfy the requirements of this SFO through the construction of a new building, and since the Government will be the sole or predominant tenant such that any other use of the building will be functionally or quantitatively incidental to the Government's use and occupancy, the following Federal Acquisition Regulation (FAR) clauses shall apply to work performed in preparation for occupancy and use of the building by the Government. Full text versions of these clauses are available upon request from the Contracting Officer. Full text versions are also available at the following web site: <http://www.arnet.gov/far/>

- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation
- 52.222-6 Davis-Bacon Act
- 52.222-7 Withholding of Funds
- 52.222-8 Payrolls and Basic Records
- 52.222-9 Apprentices and Trainees
- 52.222-10 Compliance with Copeland Act Requirements
- 52.222-11 Subcontracts (Labor Standards)
- 52.222-12 Contract Termination-Debarment
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations
- 52.222-14 Disputes Concerning Labor Standards
- 52.222-15 Certification of Eligibility

2.0 AWARD AND SELECTION FACTORS – PHASE ONE

2.1 HOW TO OFFER, PHASE ONE

- A. The project will be a two-step source selection process. The first phase is a competition among interested development teams. Up to five teams will be selected to proceed to the next step in the process. In PHASE ONE, teams will be evaluated based on the proposed members of the team, their qualifications, financial strength, past experience on similar projects and past experience on sustainable projects.

The second step of the selection process involves the selection of a development proposal representing the best building design, construction and operation based on criteria to be provided during the second phase. This step requires conceptual building design, critical system descriptions and operating plan information. Each proposal will be reviewed and evaluated. The proposal representing the best value to the government will be selected.

PHASE ONE will include the following conditions :

PHASE ONE OFFERS ARE DUE BY COB, 4:00 P.M. MST ON FEBRUARY 17, 2003 and must remain open until the PHASE TWO award is made. For additional information, see PHASE ONE Technical Evaluation Factors, Section 2.4.

The maximum number of Offerors that will be selected to proceed to Phase Two of the Procurement is five (5).

No later than the time specified above on the offer due date, the following documents, properly executed, **in six (6) complete sets**, must be submitted to the address listed below. To complete the provisions of Paragraph 3, include **only one set of the Financial and Related Data**.

1. Written authorization to negotiate from owner/developer if Offeror is a different party.
2. Information that addresses the evaluation factors listed in the Performance and Technical Evaluation Factors section.
3. Offerors Financial and Related Data as listed in the Performance and Technical Evaluation Factors section.
4. GSA Form 3518, Representation and Certifications to be completed by the Developer.
5. A copy of this SFO properly initialed by an authorized party.

Price will **not** be considered as part of the PHASE ONE submission, but will be evaluated as part of PHASE TWO for those Offerors selected to participate in PHASE TWO of the procurement.

- B. PHASE ONE offers are to be submitted to the Contracting Officer at:

Mark K. Pearce, Contracting Officer
C/O Ronald L. Simpson, Realty Specialist
General Services Administration
Box 25546, (8PC)
Denver, Colorado 80225
Phone (303) 236-8000 extension 2352
Fax (303) 235-7256

- C. There will be no public opening of offers, and all offers will be confidential until PHASE ONE has been awarded. However, The Government may release proposals outside the Government to a Government-support contractor to assist in the evaluation of offers. Such Government contractors shall be required to protect the data from unauthorized disclosure. The Offeror who desires to maximize protection of information in the offer may apply the restriction notice to the offer as described in GSA Form 3516, Solicitation Provision, 552.270-1 (d), *Restriction on Disclosure and Use of Data*

2.2 EVALUATION FACTORS GENERAL

During each phase of the procurement the Contracting Officer or designated representative may conduct oral or written negotiation with the Offerors. PHASE TWO negotiations will only be conducted with those Offerors that were selected to participate in PHASE TWO of the procurement. The Contracting Officer will determine which Offerors may participate in PHASE TWO based upon the criteria set forth in this SFO, however the number shall be no more than five.

2.3 PERFORMANCE AND TECHNICAL EVALUATION FACTORS – PHASE ONE

The following technical evaluation factors, listed in the order of importance, will be evaluated as part of Phase One of the procurement. Based upon the evaluation with respect to these factors, **the most qualified offerors will be invited to participate in PHASE TWO of the procurement**. PHASE ONE factors will also be considered as part of PHASE TWO evaluation and the ultimate award decision.

FACTOR I. DEVELOPMENT TEAM QUALIFICATIONS

Demonstrate each company and their key personnel experience, qualifications, history, private sector projects, federal government projects and scope of services.

FACTOR II. DEVELOPMENT TEAM PAST PERFORMANCE AND REFERENCES

Demonstrate the Development Team's successful experience and past performance with the design, development, construction, management and operation of office space similar in size and scope to the proposed building.

FACTOR III. SUSTAINABLE DESIGN AND PAST PROJECTS

Demonstrate the development team's successful past performance in designing, delivering, managing and operating energy efficient, sustainable projects of the size, nature and complexity contemplated in the SFO.

FACTOR IV. FINANCIAL AND RELATED DATA

Demonstrate that the development team has a successful financial background that will allow them to design, construct and operate the proposed building.

2.4 ELABORATION OF THE TECHNICAL EVALUATION FACTORS – PHASE ONE

FACTOR I. DEVELOPMENT TEAM QUALIFICATIONS

Demonstrating team professional history, credentials, licenses held, specialized experience, awards/recognition received and LEED experience is a crucial component of this factor. The offeror shall submit a statement of design philosophy and intent for the proposed team.

Demonstrate each company and their key personnel experience, qualifications, history, private sector projects, federal government projects and scope of services. Information shall be provided for, but not limited to, property management, developer, general contractor, design architect, engineers, independent commissioning agent, LEED consultant and security consultant. At least one person from each team member firm must be designated as a Key Person. The Offeror may also include specialized consultants as members of the team and provide information on these consultants.

Team "Experience" is similar if functions, responsibilities, and controls, as well as services performed are essentially the same as those noted in the SFO. The following information for evaluation of "qualifications" should be included for each company proposed as a team member and **TABBED** as follows:

1. Company name and contact information
2. Company history including all LEED certified or other green building rating system certifications of projects.
3. Mission Statement and how this is achieved.
4. Scope of Services provided.
5. Key personnel to be assigned to the project.
6. Key personnel resumes including professional credentials, licenses held and specialized experience.
7. Past project list of key personnel (maximum of five pages).
8. Significant Awards or Recognition of key personnel.
9. History of team members working together.
10. Building commissioning experience.
11. EEO compliance information.
12. Statement of design philosophy and intent for this project.

FACTOR II. DEVELOPMENT TEAM PAST PERFORMANCE AND REFERENCES

Demonstrating team experience with other projects of this type is a crucial component of this factor. The quality of past performance with reference to overall design and construction, technical precision, timeliness, and financial management (other than responsibility) are crucial components of this factor. Information indicating adherence to or deviation from stated budgets and effective resolution of obstacles during the construction period should be provided. Identify and submit a list of similar projects, all completed in the last five years, along with information on each of these projects showing the ability of the development team to design, construct and operate a similar building.

A "contract" is comparable in size and complexity if it is within 20 percent of the square footage and of similar character to that required by this SFO. The Offeror should submit a minimum of five projects up to a maximum of ten projects for evaluation. Include a minimum of three (3) projects by the proposed design architect and two or three (2-3) projects for the LEED consultant. For each project, the Offeror must list staff and key personnel responsible for managing that project. Favorable consideration will be given to projects in which members of the proposed team have previously worked together.

Submit references for each similar project identified. References shall be in letter form and include the name, address and current telephone numbers of the person or company providing the reference. References should be provided from Owner, Developer, Principal Tenant Organization, Design Architect, Mechanical Engineer, General Contractor, Principal Contracting Officer (if applicable) and consultants (i.e. Commissioning, LEED certification, Security, etc). Verifiable references for **all** development team members are to be furnished. References will be contacted to ascertain level of past performance.

Submit the experience and the extent of involvement of the team's key personnel in completing contracts of a similar nature in the previous five years. The quality of past performance with reference to overall GSA construction work or private construction work and long term building operations and management are crucial components of this factor. Offeror's references are to be furnished. References will be contacted to ascertain level of past performance.

The following information is to be included for each project:

1. Building name and location.
2. Size, description, and intended use/user of facility.
3. Design start and completion dates. (Estimated and actual)
4. Construction start and completion dates. (Estimated and actual)
5. Description of actual work performed (i.e., design, structural, technical, services, management), and the level of participation.
6. Project information including 11" x 17" drawings (a site plan, typical floor plan, exterior elevations) and photographs.
7. Estimated and actual Construction cost, number and amount of change orders.
8. Commissioning agent and plan for ~~of~~ the building.
9. LEED and Sustainable building accomplishments and certification (where applicable).
10. EEO compliance information
11. Demonstrate team experience on past efforts by providing a summary matrix of experiences of all proposed team members. (Team member names constitute the column heading of the matrix, past efforts (buildings) constitute the row headings, and the cells of the matrix are filled with X's for experience on that building or O's for no experience on that building). Include the LEED certification level achieved for each project.
12. Design awards received.
13. Statement of design intent.
14. Narrative description of the proposed HVAC system design and operation.

FACTOR III. SUSTAINABLE DESIGN AND PAST PROJECTS

Demonstrate the development team's successful experience within the last five years in the incorporation of energy efficiencies and sustainable design criteria in projects of similar size and scope. Favorable consideration will be given to projects in which members of the proposed team have worked together. Demonstrating the types of energy efficiencies, sustainable design and operations criteria that were incorporated in other projects is a crucial component of this factor.

"Sustainable Design" is similar if the functions, responsibilities and controls, as well as services performed as part of the lease, are essentially the same as those noted in the SFO. Submit the LEED scorecard and a narrative for each building in the matrix describing how all the criteria were met.

This factor will be evaluated on past experience in meeting the U.S. Green Building Council LEED Sustainable Design Criteria or other widely recognized sustainable or green building design criteria and is to be included for each project listed in the matrix as stated in Factor II above. The following information shall be provided and TABBED as follows:

1. LEED (or other widely recognized sustainable or green building) certification, scorecard and sustainable attributes narrative
2. Actual Energy performance in btu's/gsf/year
3. Water Efficiency aspects narrative.
4. Commissioning plan or narrative
5. Recycling plan or narrative
6. Energy Star rating and compliance
7. Actual water use data on a gallons/gsf/year basis.
8. Construction Indoor Air Quality plan or narrative
9. Construction recycling data.
10. Sustainable Operations and Maintenance plan or narrative
11. Innovative Technology description and narrative.

FACTOR IV. FINANCIAL AND RELATED DATA

The following information shall be submitted and TABBED in a separate sealed package prominently marked as follows:

"CONTAINS FINANCIAL INFORMATION; TO BE OPENED BY THE CONTRACTING OFFICER ONLY."

1. Name and address (business address and legal address) of Offeror
2. Type of company; (corporation, partnership, subsidiary, proprietorship, other)
3. Year company was established
4. Name and address (business and legal) of Parent Company (if applicable)
5. Names and address (business and legal) of each Subsidiary Company (if applicable)
6. Names and titles of each individual owner, principal, partner, co-venturer, legal representative, manager, managing director, president and/or Board member
7. Pending court actions, litigation, judgments, liens or other demands for payment against the Offeror, its Parent Company or Subsidiary Companies.
8. A list of current or prior (within the last five years) bankruptcy or insolvency proceedings, and proceedings for non-payment of taxes or other governmental assessments.
10. A list of contacts (name, address, telephone number) for significant construction or property development contracts the Offeror currently has in progress or has completed within the last five calendar years.
11. A list of Banking and other lending institutions (name, address, telephone number, and point of contact) from which the Offeror obtains credit.
12. A list of contractors (name, address, telephone number, and point of contact) with whom the Offeror regularly purchases supplies, services, and/or materials.
13. The Offeror's latest Profit and Loss Statement
14. The Offeror's Annual Financial Statements (Balance Sheet) for the most recent year and the immediately preceding year comparing the Offeror's assets and liabilities. The Annual Financial Statement shall contain sufficient information to allow for an assessment of the Offeror's financial position including, but not limited to, the following:
 - cash assets
 - accounts receivable (moneys owed the Offeror)
 - cash value of all inventories
 - worth of real property (land and improvements) and equipment owned by the Offeror
 - current liabilities including Offeror debts,
 - stockholders equity or amount of stock held by shareholders
 - retained earnings to be re-invested back into the company
15. Number and Dollar value of any contracts you currently have or have had within the last five years with the U.S. Government.
16. Any other data the Offeror considers pertinent to assist in an accurate determination of the Offeror's financial capability.

3.0 INSTRUCTIONS TO OFFERORS AND SOLICITATION PROVISIONS – PHASE TWO

INFORMATION CONTAINED IN THE BALANCE OF THIS SFO IS INTENDED TO INFORM THE OFFEROR OF WHAT TO EXPECT IF THE OFFEROR IS ONE OF THE PHASE ONE FINALISTS. THIS INFORMATION IS NOT INTENDED TO BE A REQUIREMENT OF THE PHASE ONE SFO NOR DO THE PROVISIONS APPLY TO PHASE ONE.

3.1 HOW TO OFFER – PHASE TWO

A. Definitions as used in this provision:

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing" or "written" means any worded or numbered expression, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

B. Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

C. Submission, modification, revision, and withdrawal of proposals.

- (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals, and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) Late proposals and revisions.

- (a) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers, unless it is received before the Government makes award and it meets at least one of the following conditions:
 - (b) It was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th).
 - (c) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.
 - (d) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.
 - (e) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 4:00 p.m. one working day prior to the date specified for receipt of proposals.
 - (f) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.
 - (g) It is the only proposal received.
- (i) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.
 - (ii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
 - (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (iv) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
 - (v) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
 - (vi) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.
 - (vii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

- (3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

- (4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
 - (5) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
 - (6) The Government will construe an offer to be in full and complete compliance with this solicitation unless the Offeror describes any deviation in the offer.
 - (7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.
- (a) Restriction on disclosure and use of data. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must meet both of the following conditions:
- (1) Mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of--or in connection with--the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]."

- (2) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal".

- (e) Lease award.

- (1) The Government intends to award a lease resulting from this two-step source selection to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and sub factors in the solicitation.
- (2) The Government may reject any or all proposals if such action is in the Government's interest.
- (3) The Government may waive informalities and minor irregularities in proposals received.
- (4) The Government intends to evaluate proposals and award a lease after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a price and technical standpoint.
- (5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (6) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or sub line items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (7) The unconditional written acceptance of an offer establishes a valid contract.
- (8) The Government may disclose the following information in post award debriefings to other offerors:
 - (i) The overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection; and
 - (iii) A summary of the rationale for award.

3.2 52.222-24 - PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a pre award compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

3.3 552.270-3 - PARTIES TO EXECUTEDOCUMENTS

- (a) If the proposed assignable option and a lease is executed by an attorney, agent, or trustee on behalf of the Offeror, an authenticated copy of its power of attorney, or other evidence to act on behalf of the Offeror, must accompany all documents.
- (b) If the Offeror is a partnership, the documents must be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if requested by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany any of the documents.
- (c) If the Offeror is a corporation all documents must be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to act shall be furnished.

3.4 52.233-2 - SERVICE OF PROTEST

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer by obtaining written and dated acknowledgment of receipt from the Contracting Officer at the address shown elsewhere in this solicitation.
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

3.5 552.233-70 - PROTESTS FILED DIRECTLY WITH THE GENERAL SERVICES ADMINISTRATION (SEP 1999)

Applies to leases which exceed \$100,000 average net annual rental, including option periods.

- (a) The following definitions apply in this provision:

"Agency Protest Official for GSA" means the official in the Office of Acquisition Policy designated to review and decide procurement protests filed with GSA.

"Deciding official" means the person chosen by the protester to decide the agency protest. The deciding official may be either the Contracting Officer or the Agency Protest Official.

The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests. GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

- (b) A protest filed directly with the General Services Administration (GSA) must:

- (1) Indicate that it is a protest to the agency.
- (2) Be filed with the Contracting Officer.
- (3) State whether the protester chooses to have the Contracting Officer or the Agency Protest Official for GSA decide the protest. If the protester is silent on this matter, the Contracting Officer will decide the protest.
- (4) Indicate whether the protester prefers to make an oral presentation, a written presentation, or an oral presentation confirmed in writing, of arguments in support of the protest to the deciding official.
- (5) Include the information required by FAR 33.103(d)(2):
 - (i) Name, address, fax number, and telephone number of the protester.
 - (ii) Solicitation or contract number.
 - (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - (iv) Copies of relevant documents.
 - (v) Request for a ruling by the agency.
 - (vi) Statement as to the form of relief requested.
 - (vii) All information establishing that the protester is an interested party for the purpose of filing a protest.
 - (viii) All information establishing the timeliness of the protest (see paragraph (b) of this provision).

- (c) An interested party filing a protest with GSA has the choice of requesting either that the Contracting Officer or the Agency Protest Official for GSA decide the protest.

- (d) The decision by the Agency Protest Official for GSA is an alternative to a decision by the Contracting Officer

- (e) The Agency Protest Official for GSA will not consider appeals from the Contracting Officer's decision on an agency protest.

- (f) The deciding official must conduct a scheduling conference with the protester within three (3) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

- (g) Oral conferences may take place either by telephone or in person. Other parties (e.g., representatives of the program office) may attend at the discretion of the deciding official.

- (h) The following procedures apply to information submitted in support of or in response to an agency protest:

- (1) The protester and the agency have only one opportunity to support or explain the substance of the protest (either orally, in writing, or orally confirmed in writing).
- (2) GSA procedures do not provide for any discovery.
- (3) The deciding official has discretion to request additional information from either the agency or the protester. However, the deciding official will normally decide protests on the basis of information provided by the protester and the agency.
- (4) The parties are encouraged, but not required, to exchange information submitted to the Agency Protest Official for GSA.
- (5) Any written response by the agency to the protest must be filed with the deciding official within five (5) days after the filing of the protest.
- (6) Any additional information that either party wants to submit in writing after one-time oral arguments in support of the agency protest, must be received by the deciding official within two (2) days after the date of the oral arguments.

- (i) The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

- (j) An interested party may represent itself or be represented by legal counsel. GSA will not reimburse the party for any legal fees related to the agency protest.

- (k) GSA will stay the award or suspend contract performance in accordance with FAR 33.103(f). The stay or suspension, unless overridden, remains in effect until the protest is decided, dismissed, or withdrawn.
- (l) decision may be oral or written. If the decision is communicated orally to the protester, the deciding official will confirm in writing within three (3) days after the decision.
- (m) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest for outside of GSA.

3.6 PHASE TWO OFFER

- A. Offers that qualify under the PHASE ONE selection process shall receive at a later date, PHASE TWO of this SFO.
The final Offerors selected will be required to provide at their sole cost and expense, a conceptual design package that include a site plan, typical floor plans, representative exterior elevations, critical building sections, a narrative description of the HVAC system, critical building systems, structural system and major material selections and a conceptual rendering of the exterior. The Government will not reimburse any of the final Offerors for any costs connected with the preparation of such documents.
- B. PHASE TWO offers must remain open until lease award. See paragraph 3.0 "INSTRUCTIONS TO OFFERORS AND SOLICITATION PROVISIONS" for information. If additional information is needed, the Contracting Officer (or the Contracting Officer's designated Representative) may be contacted.

3.7 AWARD EVALUATION FACTORS - PHASE TWO

EVALUATION FACTORS GENERAL

- A. During each phase of the procurement the Contracting Officer or designated representative may conduct oral or written negotiations with the Offerors. PHASE TWO negotiations will only be conducted with those Offerors that were selected to participate in PHASE TWO of the procurement. The Contracting Officer will determine which Offerors may participate in PHASE TWO based upon the criteria set forth in this SFO, however the number shall be no more than five.
- B. PHASE TWO Offeror's will be invited to submit a complete offer, including price, for negotiation by the PHASE TWO offer due date. In addition, Offeror's will be provided a reasonable opportunity to submit any cost or price, technical, or other revisions to their offers that may result from the negotiations. Negotiations will be closed with submission of a "Best and Final Offer" in response to a request for that offer. If a Best and Final Offer is not submitted, the last offer will be used for the final evaluation.
- C. During PHASE TWO, offers will be evaluated based upon price and the technical factors from PHASE ONE and PHASE TWO. Price is less than the value of the Technical Factors. If any information evaluated from PHASE ONE submitted by the Offeror, substantially changes, prior to the Best And Final Offers, (BAFO), the Offeror must provide that information for evaluation in PHASE TWO. The Award will be made to the responsible Offeror that offers the most advantageous offer to the Government, price, and other factors considered. The Award will not be made to an Offeror who is determined to be financially incapable of performing the requirements of the SFO.
- D. **PHASE TWO** offers should include, but not be limited to, the following completed and properly executed documents:
 1. Solicitation for Offer Phase Two – Initialed
 2. GSA Form 1364, Proposal to lease Space
 3. GSA Form 1217, Lessor's Annual Cost Statement
 4. Bid Sheet For Alternates
 5. GSA Form 3517, General Clauses
 6. GSA Form 3518, Representations and Certifications
 7. Developer's profit and overhead; General Contractor's profit, overhead and general conditions; and Sub-contractor's profit and overhead that may be applied after award for any change order costs. (Any fees, charged to change orders made after award, are limited to the above three tiers, and to the percentages specified therein).
 8. Documents supporting evidence of capability to perform. Refer to the "Evidence of Capability to Perform", Section 3.20.
 9. Offerors estimated construction costs for the building identified in the SFO.
 10. Offerors estimated construction costs for the site work, including all utilities and infrastructure as identified in the PHASE TWO SFO.
 11. Prospective financial arrangements for funding the proposed construction work, including but not limited to the estimated cost of the construction work, the portion of work to be funded by the Offerors own resources, the portion of work to be financed, other funding sources to be used (if any) and the estimated duration and other terms and conditions of the planned financing agreement.
 12. A construction completion schedule as detailed in the Technical Evaluation Factors- PHASE TWO of the SFO.
 13. Building conceptual design documents.
 14. Any additional data the Offeror considers pertinent to assist in an accurate determination of the Offerors financial capability.
 15. DOE II energy analysis, LEED scorecard and summary narrative.
 16. Design architect's narrative including a description of the building concept, materials and systems, approach to sustainability and integrated design process, and commitment to on time/on budget design.
 17. Developer's narrative explaining the team's commitment to sustainability and the Guiding Principles of Federal Architecture.

- E. There will be no public opening of offers, and all offers will be confidential until the lease has been awarded. However, the Government may release proposals outside the Government to a Government-support contractor to assist in the evaluation of offers. Such Government contractors shall be required to protect the data from unauthorized disclosure. The Offeror who desires to maximize protection of information in the offer may apply the restriction notice to the offer as described in GSA Form 3516, Solicitation Provision, 552.270-1 (d), *Restriction on Disclosure and Use of Data*.
- F. After conclusion of PHASE TWO of the procurement, the Contracting Officer will require the Offeror selected for award to execute the proposed lease prepared by GSA that reflects the proposed agreement of the parties.
- G. The proposed lease shall consist of but not be limited to the following elements:
 - 1. Standard Form 2 (or GSA Form 3626) U.S. Government Lease for Real Property.
 - 2. Required clauses.
 - 3. Required certifications and representations.
 - 4. The pertinent provisions of the offer, and
 - 5. The pertinent provisions of the SFO, and any amendments to the SFO.

3.8 NEGOTIATIONS

- 1. Negotiations will be conducted on behalf of the Government by the Contracting Officer (or the Contracting Officer's designated representative).
- 2. During the course of the project and after lease award the Offeror shall not enter into negotiations concerning the space leased or to be leased with representatives of federal agencies other than the Contracting Officer or designee. Only additions, deletions, or alterations authorized by the Contracting Officer or designee will be recognized. Changes, deletions, or alterations resulting from unauthorized discussion / contact and without the written approval of the Contracting Officer will become the sole financial responsibility of the Offeror.
- 3. The acceptance of the offer and award of the lease by the Government occurs upon notification of unconditional acceptance of the offer or execution of the lease by the Contracting Officer and mailing or otherwise furnishing written notification or the executed lease to the successful Offeror.
- 4. During the second phase of the procurement (see paragraph "How to Offer, Phase Two"); the Contracting Officer will conduct oral or written negotiations with all Offerors that are in the competitive range. The competitive range will be established by the Contracting Officer on the basis of cost or price and other factors (if any) that are stated in this SFO and will include all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency.

3.9 TECHNICAL EVALUATION FACTORS – PHASE TWO

Evaluation Factors and information provided in PHASE ONE shall be used in conjunction with the PHASE TWO Evaluation Factors in the final evaluation for award. PHASE TWO Offerors will be provided a reasonable opportunity to submit any cost or price, technical, or other revisions to their offers that may result from the negotiations, including discussion and clarification of the deficiencies, significant weaknesses and adverse past performance information to which the offeror has not yet had an opportunity to respond.

The following shall be submitted by the PHASE TWO Offerors for evaluation during PHASE TWO of the procurement:

- A. A schedule that demonstrates a well thought out, complete and realistic approach to complete the construction of the project by the completion dates identified in the SFO. The schedule shall include timing for the completion of design and construction milestones including but not limited to: 1) submittal of preliminary plans and specifications; 2) submittal of other working drawings; 3) issuance of a building permit; 4) completed construction documents; 5) start of construction; 6) completion of principal categories of work; 7) final construction completion.
- B. All offers submitted for PHASE TWO will be evaluated to determine whether the offers **fully** meet Interagency Committee on Seismic Safety in Construction (ICSSC) RP 6, *Standards of Seismic Safety for Existing Federally Owned or Leased Buildings and Commentary*, and the accessibility requirements of the Americans With Disabilities Act Accessibility Guidelines (ADAAG) (Code of Federal Regulations 36 CFR Part 1191, App. A) and the Uniform Federal Accessibility Standards (UFAS) (Federal Register vol. 49, No. 153, August 7, 1984, reissued as FED. STD. 795, dated April 1, 1988, and amended by Federal Property Management Regulations CFR 41, Subpart 101-19.6, Appendix A, 54 FR 12628, March 28, 1989). Where standards conflict, the more stringent shall apply. If any offers are received which fully meet accessibility and seismic safety requirements, then other offers, which do not fully meet these requirements, will not be considered.
- C. FULL COMPLIANCE:
 - 1. "Fully meets" as used herein with regard to the accessibility requirements means the offer fully complies with both the ADAAG and the UFAS requirements, including but not limited to: Parking and Passenger Loading Zones, Accessible Route, Entrance and Egress, Ramps, Stairs, Handrails, Doors, Elevators, Telephones, Controls, Signage, Alarms, Drinking Fountains, Storage Facilities, Seating and Workstations, Assembly Areas, and Toilet Rooms. Where standards conflict, the more stringent shall apply.
 - 2. "Fully meets" as used herein with regard to the seismic safety requirements means that the Offeror has provided a written certification (see Attachment A) from a licensed structural engineer certifying that both the building design and

construction are in full compliance with the life-safety performance level of ICSSC RP 6, *Standards of Seismic Safety for Existing Federally Owned or Leased Buildings and Commentary*. Show full compliance with Tier-1 FEMA-310, *Handbook for the Seismic Evaluation of Buildings: A Prestandard Checklist*.

3. At least one accessible route shall be provided from an accessible entrance to the leased space and all required accessible areas. At least one interior means of vertical access shall be provided. Elevators shall have complying Controls and Signage.
4. If parking is provided, then accessible spaces shall be included.
4. Accessible toilet rooms shall be provided in compliance with State and Local codes

3.10 METHODOLOGY FOR AWARD

After review by the Government of the PHASE TWO "Best and Final" offers is complete, the lease will be awarded to the Offeror whose offer will be **most advantageous to the Government, PRICE AND OTHER FACTORS CONSIDERED**. Price will not be considered as part of this initial submission, but will be evaluated as part of PHASE TWO for those Offerors selected to participate in PHASE TWO of the procurement.

3.11 PROPERTY TAX ADJUSTMENT (SEP 2000)

- A. Real estate taxes, as referred to in this paragraph, are only those taxes which are assessed against the building and/or the land upon which the building is located, without regard to benefit to the property, for the purpose of funding general Government services. Real estate taxes shall not include, without limitation, general and/or special assessments, business improvement district assessments, or any other present or future taxes or governmental charges that are imposed upon the Lessor or assessed against the building and/or the land upon which the building is located.
- B. Base year taxes as referred to in this paragraph are 1) the real estate taxes for the first 12-month period coincident with full assessment or 2) may be an amount negotiated by the parties that reflects an agreed upon base for a fully assessed value of the property.
- C. The term "full assessment" as referred to in this paragraph means that the taxing jurisdiction has considered all contemplated improvements to the assessed property in the valuation of the same. Partial assessments for newly constructed projects or for projects under construction, conversion, or renovation will not be used for establishing the Government's base year for taxes.
- D. The Lessor shall furnish the Contracting Officer with copies of all notices which may affect the valuation of said land and buildings for real estate taxes thereon, as well as all notices of a tax credit, all tax bills, and all paid tax receipts, or where tax receipts are not given, other similar evidence of payment acceptable to the Contracting Officer (hereinafter, evidence of payment), and a proper invoice (as described in GSA Form 3517, General Clauses, 552.232-75, *Prompt Payment*) of the tax adjustment including the calculation thereof, for each year that real estate taxes are incurred during the lease term or any extension thereof. All such documents are due within 10 calendar days of receipt except that the proper invoice and evidence of payment shall be submitted within 60 calendar days after the date the tax payment is due from the Lessor to the taxing authority. **FAILURE TO SUBMIT THE PROPER INVOICE AND EVIDENCE OF PAYMENT WITHIN SUCH TIME FRAME SHALL BE A WAIVER OF THE RIGHT TO RECEIVE PAYMENT RESULTING FROM AN INCREASED TAX ADJUSTMENT UNDER THIS PARAGRAPH.**
- E. The Government shall 1) make a single annual lump sum payment to the Lessor for its share of any increase in real estate taxes during the lease term over the amount established as the base year taxes or 2) receive a rental credit or lump sum payment for its share of any decreases in real estate taxes during the lease term below the amount established as the base year taxes. The amount of lump sum payment or rental credit shall be based upon evidence of valuation and payment submitted by the Lessor to the Contracting Officer in accordance with subparagraph D.
 1. In the event of an increase in taxes over the base year, the Lessor shall submit a proper invoice of the tax adjustment including the calculation thereof together with evidence of payment to the Contracting Officer. **THE GOVERNMENT SHALL BE RESPONSIBLE FOR PAYMENT OF ANY TAX INCREASE OVER THE BASE YEAR TAXES ONLY IF THE PROPER INVOICE AND EVIDENCE OF PAYMENT IS SUBMITTED BY THE LESSOR WITHIN 60 CALENDAR DAYS AFTER THE DATE THE TAX PAYMENT IS DUE FROM THE LESSOR TO THE TAXING AUTHORITY.** The due date for making payment shall be the 30th calendar day after receipt of evidence of payment by the Contracting Officer or the 30th calendar day after the anniversary date of the lease, whichever is later. If the lease terminates before the end of a tax year, payment for the tax increase due as a result of this section for the tax year will be prorated based on the number of days that the Government occupied the space. No increase will be paid, due, or owing unless all evidence of valuation and payment has been previously submitted to the Contracting Officer. The Government's payment for its share of real estate taxes shall not include any late charges, interest, or penalties imposed by the taxing authority as a result of the Lessor's delinquency in paying such taxes or charges.
 2. In the event of a decrease in taxes from the base year, or in the event of any refund or tax deduction, the Lessor shall notify the Contracting Officer in accordance with subparagraph D. The Government shall be entitled to, and shall receive a credit for, the prorata reduction in taxes applicable to the premises encumbered by this lease, regardless of whether the Government has made a tax payment for that year. The Government's share of the credit will be determined in accordance with subparagraph F and shall be taken as a deduction from the rent. Any credit due the Government after the expiration or earlier termination of the lease (including, but not limited to, credits resulting from a decrease in taxes pursuant to a tax credit due the Lessor; a reduction in the tax assessment; or a tax appeal proceeding for a year of the lease, or portion thereof) shall be made by a lump sum payment to the Government or as a rental credit to any succeeding lease as determined by the Contracting Officer. The Lessor shall remit any lump sum payment to the Government within 15 calendar days of payment by the taxing authority to the Lessor or the Lessor's designee. If the credit due to the Government is not paid by the due date, interest shall accrue on the late payment at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (United States Code 41 USC 611) that is in effect on the day after the due date. The interest penalty shall accrue daily on the amount of the credit and shall be compounded in 30-day

increments inclusive from the first day after the due date through the payment date. The Government shall have the right to pursue the outstanding balance of any tax credit using all such collection methods as are available to the United States to collect debts. Such collection rights shall survive the expiration of this lease.

- F. The Government shall pay its share of tax increases or shall receive its share of any tax decrease based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building or complex (percentage of occupancy). For the purpose of this lease, the Government's percentage of occupancy as of the date hereof is -----% percent based upon an occupancy of ----- rentable square feet in a building of ----- rentable square feet. This percentage shall be subject to adjustment to take into account additions or reductions of the amount of space as may be contemplated in this lease or amendments hereto.
- G. The Government may direct the Lessor upon reasonable notice to initiate a tax appeal, or the Government may decide to contest the tax assessment on behalf of the Government and the Lessor or for the Government alone. The Lessor shall furnish to the Government information necessary for appeal of the tax assessment in accordance with the filing requirements of the taxing authority. If the Government decides to contest the tax assessment on its own behalf or on behalf of the Government and the Lessor, the Lessor shall cooperate and use all reasonable efforts including, but not limited to, affirming the accuracy of the documents, executing documents required for any legal proceeding, and taking such other actions as may be required. If the Lessor initiates an appeal on behalf of the Government, the Government and the Lessor will enter into an agreement to establish a method for sharing expenses and tax savings.

3.12 OPERATING COSTS

- A. Beginning with the second year of the lease and each year thereafter, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, and landscaping, and certain administrative expenses attributable to occupancy. Beginning with the third year of the lease and each year thereafter, the Government shall pay adjusted rent for changes in the costs of Utilities, based on first year actual costs, as stated in paragraph F below. Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.
- B. The amount of adjustment will be determined by multiplying the base rate by the percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published in the month of the lease commencement date with the index figure published in the month that begins each successive 12-month period. For example, a lease which commences in June of 1995 would use the index published in June of 1995, and that figure would be compared with the index published in June of 1996, June of 1997, and so on, to determine the percent change. The Cost of Living Index will be measured by the Department of Labor revised Consumer Price Index for wage earners and clerical workers, U.S. city average, all items figure, (1982 to 1984 = 100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the lease.
- C. If the Government exercises an option to extend the lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.
- D. In the event of any decreases in the Cost of Living Index occurring during the term of the occupancy under the lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this paragraph.
- E. The offer shall clearly state whether the rental is firm throughout the term of the lease or if it is subject to annual adjustment of operating costs as indicated above. If operating costs will be subject to adjustment, those costs shall be specified on GSA Form 1364, Proposal to Lease Space.
- F. On the first anniversary date of the lease, the operating rent will be adjusted to provide for increases or decreases in the Lessor's cost of furnishing utilities. The operating rent for the following year will be adjusted to reflect the actual costs of utilities for the previous year. The adjustment shall not include any fines, penalties, interest, or cost added thereto for non-payment or for delay in payment beyond any discount period. The base year cost of the utilities shall be \$-----per square foot. The Lessor shall provide the Government with statements from the first year of the lease showing detailed costs of utilities provided. Payment of the adjusted operating rent will become due on the first workday of the second month (a maximum of 60 days) following approval from the Government of the actual increase or decrease. After this adjustment of the operating rent, at the third anniversary of the lease, the operating rent (includes utilities) shall be adjusted on an annual basis based upon the CPI escalator stated in GSAR 552.270-23.

3.13 OPERATING COSTS BASE

The base for the operating costs adjustment for "other expenses" will be established during negotiations based upon ANSI/BOMA Office Area square feet.

3.14 NOVATION AGREEMENT

- A. In the event of a transfer of ownership of the lease premises, or a change in the Lessor's legal name, the Lessor must comply with the requirements of Subpart 42.12 of the Federal Acquisition Regulations (FAR).
- B. "Change-of-name agreement" means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.
- C. "Novation agreement" means a legal instrument executed by the:
 - 1. Contractor (transferor)
 - 2. Successor in interest (transferee)
 - 3. Government, by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.
- D. The Government generally executes a Novation Agreement when the leased property is sold or other interest in the property is legally transferred. A Novation Agreement provides that:
 - 1. The transferee assumes all the transferor's obligations under the contract.
 - 2. The transferor waives all rights under the contract against the Government
 - 3. The transferor guarantees performance of the contract by the transferee
 - 4. Nothing in the agreement shall relieve the transferor or transferee from compliance with any federal law
- E. The Contracting Officer must be notified in writing of the proposed change-of-name or ownership prior to execution of any Novation Agreement. The Contracting Officer may request additional information (i.e., copy of the deed of trust, bill of sale, certificate of merger, contract, court decree, etc.) from the transferor or transferee to validate the proposed changes.
- F. Any separate agreement between the transferor and transferee regarding the assumption of liabilities should be referenced specifically in the Novation Agreement.
- G. When it is in the best interest of the Government not to concur in the transfer of a contract from one entity to another, the original contractor remains under contractual obligation to the Government. The contract may be terminated for reasons of default, should the original contractor fail to perform.
- H. When executed on behalf of the Government, a Novation Agreement is made part of the lease via Supplemental Lease Agreement.

3.15 ANSI/BOMA OFFICE AREA SQUARE FEET

- A. For the purposes of this SFO, the Government recognizes the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) international standard (Z65.1-1996) definition for Office Area, which means "the area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."
- B. ANSI/BOMA Office Area square feet shall be computed by measuring the area enclosed by the finished surface of the room side of corridors (corridors in place as well as those required by local codes and ordinances to provide an acceptable level of safety and/or to provide access to essential building elements) and other permanent walls, the dominant portion (refer to Z65.1) of building exterior walls, and the center of tenant-separating partitions. Where alcoves, recessed entrances, or similar deviations from the corridor are present, ANSI/BOMA Office Area square feet shall be computed as if the deviation were not present.

3.16 APPURTENANT AREAS

The right to use appurtenant areas and facilities is included. The Government reserves the right to post Government rules and regulations where the Government leases space.

3.17 LIQUIDATED DAMAGES

In case of failure on the part of the Lessor to complete the building within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this paragraph, the sum of \$15,000.00 for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies that may be available under this lease or at law.

3.18 PUNCHLIST AND FINAL INSPECTION

A final inspection will be conducted prior to occupancy of the space. A certificate of occupancy must be provided prior to or during the final inspection, however Government acceptance of the space is an independent determination. The Government will not accept substantially complete space and the Government will not accept space until punch list items are completed to the satisfaction of the Government. No rent will accrue until the Government accepts the completion of the punch list items.

3.19 ADJUSTMENT FOR VACANT PREMISES, GSAR 552.270-16

- A. If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the term of the lease, the rental rate will be reduced.
- B. The rate will be reduced by that portion of the costs per ANSI/BOMA Office Area square foot of operating expenses not required to maintain the space. Said reduction shall occur after the Government gives 30 calendar days prior notice to the Lessor and shall continue in effect until the Government occupies the premises or the lease expires or is terminated.

3.20 EVIDENCE OF CAPABILITY TO PERFORM

A. AT THE TIME OF SUBMISSION OF PHASE TWO OFFERS, THE OFFEROR SHALL SUBMIT TO THE CONTRACTING OFFICER:

1. Satisfactory evidence of at least a conditional commitment of funds in an amount necessary to prepare the space. Such commitments shall be signed by an authorized bank officer and at a minimum shall state: amount of loan; term in years; annual percentage rate; and length of loan commitment.
2. Verification of license or certification to practice in the State of Colorado from the individual(s) and/or firm(s) providing construction, architectural, and engineering design services.

B. AFTER AWARD:

Within thirty (30) days after award, the successful Offeror of Phase Two will be required to provide to the Contracting Officer evidence of:

1. A firm commitment of funds in an amount sufficient to perform the work for both construction and permanent financing.
2. Award of a construction contract with a firm completion date.
3. Issuance of a building permit covering construction of the building and improvements.
4. Approval of the Lower Downtown Denver Design Review Board.
5. Accepting and executing GSA Forms that will be attached to the Phase Two SFO.

3.21 CONSTRUCTION SCHEDULE

- A. Within 30 days after award of the lease contract, the successful Offeror shall submit to the Contracting Officer a tentative construction schedule giving the dates on which the various phases of construction will be completed to coincide with the Government's required occupancy date. Refer to the "Occupancy Date" paragraph in the Occupancy Date Section of this SFO. The finalized schedule shall be submitted no later than 60 days after award.
- B. The schedule shall include timing for completion of design and construction milestones including, but not limited to: 1) submittal of preliminary plans and specifications; 2) submittal of other working drawings; 3) issuance of a building permit; 4) completed construction documents; 5) start of construction; 6) completion of principal categories of work; 7) phased completion and availability for occupancy of each portion of the Government-demised area (by floor, block, or other appropriate category); and 8) final construction completion.

3.22 CONSTRUCTION INSPECTIONS

- A. Construction inspections will be made periodically by the Contracting Officer and/or designated technical representatives to review compliance with the SFO requirements and the final working drawings.

(1) Periodic reviews, tests, and inspections by the Government are not to be interpreted as resulting in any approval of the Lessor's apparent progress toward meeting the Government's objectives but are intended to discover any information that the Contracting Officer may be able to call to the Lessor's attention to prevent costly misdirection of effort. The Lessor shall remain completely responsible for designing, constructing, operating, and maintaining the building in full accordance with the requirements of the Phase Two SFO.
- B. The successful Offeror shall maintain a complete set of updated plans, change orders, etc. onsite during construction of the building.

3.23 CONSTRUCTION DOCUMENTATION AFTER AWARD

Upon request by the Contracting Officer, the following documentation must be provided by the Offeror, at Offeror's expense:

- A. An assessment of the subsoil conditions including the design bearing value and foundation type and capacity. Identify types of soils, bedrock and water depths.
- B. Complete site data including existing grades and finish, design elevations, method of site drainage, location of water, sewage, utility lines, etc.
- C. Complete structural calculations prepared, stamped, and signed by a professional engineer licensed in the State of Colorado.
- D. Complete structural framing plan.
- E. Heating and cooling peak load calculations.
- F. HVAC plans and equipment specifications --- HVAC duct layouts, specific HVAC zones, and HVAC zone controls. All dampers including fire dampers and volume control dampers must be shown with ductwork ahead of the distribution terminal indicated in true size; automatic control diagrams showing sequence of operation of equipment; plans showing plumbing layout and fixtures; riser diagrams for waste and vent lines; layout of equipment rooms showing all mechanical equipment; mechanical details; and

complete equipment schedules. All HVAC calculations shall be provided to show the equipment to be installed can meet the specifications for the building.

- G. Electrical plans and equipment specifications --- floor plans showing lighting, power distribution and communication raceway distribution; one line diagram of primary and secondary power distribution; circuit and control systems layout of lighting control system; site plan indicating service locations, manholes, duct banks and site lighting; layout of electrical equipment spaces showing all electrical equipment including elevation of substation transformers and disconnect switches; schedules for switchgear, switchboard, motor control centers, panel boards and unit substations; grounding diagram; elevator control transfer diagram.
- H. A complete telephone layout, a complete data outlet layout, and a complete layout plan for all security system devices.
- I. Door hardware schedules and specifications.
- J. Room finish schedules and specifications.
- K. Special equipment specifications.
- L. Final dimensioned plans, elevations, building sections, and architectural detail drawings.
- M. Building sprinkler systems, hydraulic calculations, and associated drawings.
- N. Other building code analyses and certifications.
- O. All final design calculations not otherwise listed above.
- P. Perspective rendering: at 90% design, the Lessor shall provide four, 24" by 36" color renderings, professionally rendered, matted and framed and four 10" x 13" photos of the color renderings, negatives and electronic .jpg files for the photos.
- Q. Before the final inspection process, the Lessor must provide evidence of the "bake-out" period, the building permit, and inspection sign-off, final HVAC testing and balancing reports, and occupancy permit. Rent shall commence when the Government accepts the space and a valid occupancy permit are received by the Government.

All corrections and updates to the construction documents must be automatically forwarded to the Contracting Officer.

3.24 CAD AS-BUILT FLOOR PLANS (SEP 2000)

Computer-Aided Design (CAD) files of as-built construction documents showing the space under lease, as well as corridors, stairways, and core areas, shall be provided to the Contracting Officer. The Design files shall have been generated by a CAD program that is compatible with the latest release of AutoCAD. The required file extension is .DWG. Clean and purged files shall be submitted on CD-ROM. Three (3) copies of the CD shall be provided to the Contracting Officer and must include three (3) full sets of "as-built" drawings, containing every drawing that is included in the construction set of drawings. They shall be labeled with the building name, address, list of drawing(s), date of the drawing(s), and Lessor's architect and phone number. The Lessor's operator shall demonstrate the submission on GSA equipment, if requested by the Contracting Officer.

3.25 UNIQUE REQUIREMENTS – PHASE TWO

- A. All PHASE TWO Offers must be for **a fully serviced lease**. The lease must include all utilities, janitorial, landscaping, maintenance, snow removal, security, etc..
- B. An on-site property manager, employed and paid by the successful offeror, must be provided.
- C. The building shall conform to the latest version of ASHRAE/EIS 90.1 and specifications identified in this solicitation, including the ASHRAE/EIS 90.1 "Energy Efficient Design of New Buildings, Except New Low -Rise Residential Buildings." The most stringent code shall apply and govern.
- D. The Government reserves the right to install any security and telecommunications items, as it deems necessary.
- E. The Lessor is ultimately responsible for the design, construction, operation, and maintenance of the building. Additionally the Lessor understands that it is the Lessor's responsibility to obtain the architectural and engineering services required to provide construction documents, and that the Lessor will be responsible for any, and all liability of the design. The Government Team will perform design reviews as a courtesy to the Developer's Team; however the Lessor remains responsible for all design and engineering solutions.
- F. The site for the building has been predetermined as stated in Paragraph 1.1 B of this SFO. A copy of the "Assignable Option Agreement" (Option Agreement) is herewith attached. The successful Offeror shall adopt the Option Agreement as Assignor and assumes the responsibility of the purchase and successful closing as Purchaser of the sale of the Site.
- G. Lessor is responsible for obtaining all permits, inspections, approvals, and certificates required by law. This includes, but is not necessarily limited to: State Inspections, Denver Fire Department, City of Denver Building, Planning and Zoning Departments, etc. Payment for all permits, inspections, and certificates will be the responsibility of the Lessor.
- H. Before the Government's final inspection process and acceptance of the Building, the Lessor must provide evidence of the building permit and inspection sign-off by the local code authorities, final HVAC testing and balance reports, occupancy permit, operation and maintenance manuals, and as-built drawings on CD-Rom.
- I. The Government, subject to the completion of punch list items, will not accept substantially complete space. The Government will not accept space until punch list items are completed to the satisfaction of the Government. No rent shall accrue until the Government accepts the completion of the punch list items.
- J. It is hereby recognized by the parties that "Reimbursable Items" are the property of the Government, but are to be provided and maintained as part of the Lease contract. The Security System will be owned and maintained by the Government.
- K. The Lower Downtown Denver Design Review Board is the governing agency for design review within the guidelines established by the City and County of Denver.

4.0 SUSTAINABLE DESIGN REQUIREMENTS

ONE OF THE OBJECTIVES OF THIS PROCUREMENT IS FOR THE PROJECT TO BE LEED CERTIFIED, SILVER LEVEL MINIMUM. THE SUCCESSFUL OFFEROR WILL BE RESPONSIBLE FOR FUNDING, PREPARING AND SUBMITTING THE LEED REGISTRATION APPLICATION.

The Offeror shall have a LEED Accredited Professional team member identified at the time of offer of the project. The LEED Accredited Professional shall have at a minimum 1-year of previous experience in submitting LEED documentation to the USGBC and be familiar with federal government construction projects. This person shall oversee, provide, submit and obtain the documentation for LEED certification during the planning, design and construction phases of the project. Failure to reach the Silver Level LEED rating will result in a one time penalty of \$250,000 from the rental payments due for the building. At the completion of the work, the Offeror shall provide (3) copies of all supporting documentation for certification, (1) copy shall be for EPA files.

4.1 GENERAL REQUIREMENTS

The successful Offeror will be responsible for funding, preparing and managing following:

- A. A building operation plan with the offer that addresses the requirements of ISO 14001, an environmental management system.
- B. Cleaning products considered environmentally preferable by the Government in the fulfillment of regular housekeeping duties and requirements.
- C. Provide the tenant "internal recycling" services as part of their offer.
- D. Include as part of janitorial services, the removal of recyclable materials from EPA space. The Offeror shall track the amount of materials recycled.

4.2 ENERGY AND ENVIRONMENTAL REQUIREMENTS

- A. The building shall achieve EPA Energy Star Building Certification Rating within 14 months of reaching 95% occupancy. The Offeror will submit the documentation to GSA. The Offeror shall make all necessary adjustments at his expense, if the new building systems installed do not meet Energy Star certification after occupancy. The Offeror is encouraged to use: Energy Savings Performance Contracts (ESPC) or utility agreements to achieve, maintain or exceed the ENERGY STAR Benchmark Score of 75.
- B. The property shall comply with all applicable environmental laws, including but not limited to air pollution regulations, asbestos regulations (if applicable), hazardous waste regulations, and underground storage tank regulations. The Offeror will be responsible for compliance with the water and energy conservation requirements of the Energy Policy Act of 1992 (PL 102-486, 106 Statute 2776). The Offeror will commit to provide periodic reports to demonstrate the Government's equivalent water usage consistent with the Energy Policy Act of 1992.
- C. The Offeror shall submit a Construction IAQ Management Plan for construction during pre-occupancy and occupied conditions with the offer.
- D. The Development team shall provide all necessary documentation to GSA and EPA in the form of a "Green Report" for the leased facility, documenting the sustainable features and benefits of the building, during its planning, design, construction and future operation.

4.3 CONSTRUCTION WASTE MANAGEMENT

- A. The successful Offeror shall submit to the Government a proposal to dispose of or recycle construction waste. Where the small quantity of material, the extraordinarily complex nature of the waste disposal method, or prohibitive expense for recycling would represent a genuine hardship, the Government may permit alternative means of disposal. This requirement shall also apply to subsequent alterations under the lease.
- B. Recycling construction waste means providing all services necessary to furnish construction materials or wastes to organizations, which will employ these materials, or wastes in the production of new materials. Recycling includes required labor and equipment necessary to separate individual materials from the assemblies of which they form a part.

4.4 RECYCLED CONTENT PRODUCTS (COMPREHENSIVE PROCUREMENT GUIDELINES)

- A. The Offeror shall comply to the extent feasible with the Resource Conservation and Recovery Act (RCRA), Section 6002, 1976. The Lessor shall use recycled content products as indicated in this SFO and as designated by the U.S. Environmental Protection Agency (EPA) in the Comprehensive Procurement Guidelines (CPG), 40 CFR Part 247, and its accompanying Recovered Materials Advisory Notice (RMAN). The CPG lists the designated recycled content products. EPA also provides recommended levels of recycled content for these products. The list of designated products, EPA's recommendations, and lists of manufacturers and suppliers of the products can be found at the www.epa.gov/cpg/products.htm web site.

- B. The Offeror, if unable to comply with both the CPG and RMAN lists, shall submit a request for waiver for each material to the Contracting Officer with initial offers. The request for waiver shall be based on the following criteria:
1. the cost of the recommended product is unreasonable;
 2. inadequate competition exists;
 3. items are not available within a reasonable period of time; and
 4. items do not meet the SFO's performance standards.

4.5 ENVIRONMENTALLY PREFERABLE BUILDING PRODUCTS AND MATERIALS

- A. The Offeror shall use environmentally preferable products and materials where economically feasible. Environmentally preferable products have a lesser or reduced effect on human health and the environment when compared to other products and services that serve the same purpose.
- B. Refer to EPA's environmentally preferable products web site, www.epa.gov/opptintr/epp. In general, environmentally preferable products and materials do one or more of the following:
1. contain recycled material, are biobased, or have other positive environmental attributes;
 2. minimize the consumption of resources, energy, or water;
 3. prevent the creation of solid waste, air pollution, or water pollution; and
 4. promote the use of non-toxic substances and avoid toxic materials or processes.

5.0 MISCELLANEOUS

5.1 SUBSEQUENT TENANT IMPROVEMENTS \$100,000 OR LESS (SEP 2000)

- A. The Offeror may be requested to provide alterations during the term of the lease. Alterations will be ordered by issuance of GSA Form276, Supplemental Lease Agreement, GSA Form300, Order for Supplies or Services, or a Tenant Agency-approved form. The two clauses from GSA Form3517, General Clauses, 552.232-25, *Prompt Payment* (Deviation FAR52.232-25), and 552.232-70, *Invoice Requirements*, apply to orders for alterations. All orders are subject to the terms and conditions of this lease.
- B. Orders may be placed by the 1) Contracting Officer, 2) GSA Building Manager, or 3) Tenant Agency officials when specifically authorized to do so by the Contracting Officer. The Contracting Officer will provide the Lessor with a list of Tenant Agency officials authorized to place orders and will specify any limitations on the authority delegated to Tenant Agency officials. The Tenant Agency officials are not authorized to deal with the Lessor on any other matters.
- C. Payments for alterations ordered by the Tenant Agency will be made directly by the Tenant Agency placing the order.
- D. PHASE TWO Offeror's will be required in their pricing schedule to incorporate in their building costs, a reimbursement to EPA but made payable to GSA, in the amount of \$100,000.00, as funds advanced by EPA for the completion of the NEPA requirements for this project.

END